

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

JHONNY MARCELINO NUNEZ GARCIA,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:16-CV-161
(GROH)**

DIANE McLEAN, MD, Metropolitan Correctional Center, NY, NY; MICHAEL BORECKY, MD, Metropolitan Detention Center, Brooklyn, NY; BRIAN BUSCHMAN, DR, USP Allenwood; BRIAN GERSON, MS/NP-C, USP Allenwood; JODY BENNETT-MEEHAN, PA-C, USP Allenwood; B. WOOD, PA-C, USP Allenwood; ELIZABETE SANTOS, Clinical Director, USP Allenwood; AMY ARMEL, PA-C, USP Hazelton; LEIGH BIRD, PA-C, USP Hazelton; ROBERT BEAUDOUIN, MD Clinical Director, Metropolitan Correctional Center, NY, NY; A. ABOULFATCH, A MLP, Metropolitan Correctional Center, NY, NY; Y. JOAQUIN, MLP, Metropolitan Correctional Center, NY, NY; VICTOR GONZALEZ, MD, Metropolitan Correctional Center, Brooklyn, NY; JENNIFER HOLTZAPPLE, PA, USP Allenwood; TERRY O'BRIEN, Complex Warden, USP Hazelton; THOMAS O. DUVALL, PHD, LMHC, NCC Psychologist, USP Hazelton; B. FRIEND, RN Health Service Administrator, USP Hazelton; N. RAZAVI, MD, USP Hazelton; CHRISTOPHER MEYER, MPAS, PA-C, USP Hazelton; JOHN PYLES, FNP-BC, USP Hazelton; and CHARLES CRAIG, PA ALP, USP Allenwood,

Defendants.

**MEMORANDUM OPINION AND ORDER
ADOPTING REPORT AND RECOMMENDATION**

The above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge Michael John Aloï. ECF No. 79.

Pursuant to Rule 2 of the Local Rules of Prisoner Litigation Procedure, this action was referred to Magistrate Judge Aloï for submission of a proposed report and recommendation (“R&R”). On February 22, 2018, Magistrate Judge Aloï filed an R&R in which he recommended that this Court dismiss the Plaintiff’s complaint with and without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Moreover, “[w]hen a party does make objections, but these objections are so general or conclusory that they fail to direct the district court to any specific error by the magistrate judge, *de novo* review is unnecessary.” Green v. Rubenstein, 644 F. Supp. 2d 723, 730 (S.D. W. Va. 2009) (citing Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982)). Failure to file timely objections also constitutes a waiver of *de novo* review and the Plaintiff’s right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1)(C); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Here, objections to Magistrate Judge Aloï’s R&R were due within fourteen days after the Plaintiff was served, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure. The Plaintiff was served with the R&R on March 2, 2018. Accordingly, objections were due no later than March 22, 2018, after accounting for delivery time. No objections have been filed to date. Thus, the Court will undertake

a *de novo* review of Magistrate Judge Aloï's findings.

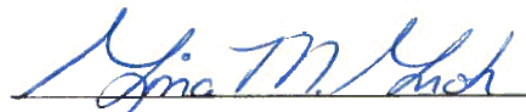
Upon careful review of the record, it is the opinion of this Court that Magistrate Judge Aloï's Report and Recommendation should be, and is, hereby **ADOPTED** for the reasons more fully stated therein.

Accordingly, the Plaintiff's complaint [ECF No. 1] is **DISMISSED WITH PREJUDICE** as to Claims: 5 (Buschman), 6 (Buschman), 7 (Bennett-Meehan), 11 (Bennett-Meehan), 12 (Buschman), 18 (Gerson), 22 (Craig), 26 (Meyer) and 29 (Buschman). The Plaintiff's complaint [ECF No. 1] is **DISMISSED WITHOUT PREJUDICE** as to Claims: 1 (all defendants), 2 (McLean), 3 (Borecky), 4 (Wood), 8 (Santos), 9 (no named defendant), 10 (Armel), 13 (Wood), 14 (no named defendant), 15 (Beaudouin), 16 (Aboulfatch), 17 (Joaquin), 19 (Gonzalez), 20 (Holtzapple), 21 (O'Brien), 23 (Friend), 24 (Duvall), 25 (Razavi), 27 (Pyles) and 28 (Bird). The Defendants' Motions to Dismiss [ECF Nos. 52, 56] are **GRANTED**.

The Clerk is **DIRECTED** to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* Plaintiff by certified mail, return receipt requested, to his last known address as shown on the docket sheet. The Clerk is further **DIRECTED** to **TERMINATE** the Plaintiff's Motion to Stay [ECF No. 81] as **MOOT** and **STRIKE** this case from the Court's active docket.

It is so **ORDERED**.

DATED: April 13, 2018


GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE